

One Hundred Ninth Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Tuesday,
the third day of January, two thousand and six*

An Act

To amend title 17, United States Code, to make technical corrections relating to Copyright Royalty Judges, and for other purposes.

*Be it enacted by the Senate and House of Representatives of
the United States of America in Congress assembled,*

SECTION 1. SHORT TITLE.

This Act may be cited as the “Copyright Royalty Judges Program Technical Corrections Act”.

SEC. 2. REFERENCE.

Any reference in this Act to a provision of title 17, United States Code, refers to such provision as amended by the Copyright Royalty and Distribution Reform Act of 2004 (Public Law 108–419) and the Satellite Home Viewer Extension and Reauthorization Act of 2004 (title IX of division J of Public Law 108–447).

SEC. 3. AMENDMENTS TO CHAPTER 8 OF TITLE 17, UNITED STATES CODE.

Chapter 8 of title 17, United States Code, is amended as follows:

(1) Section 801(b)(1) is amended, in the matter preceding subparagraph (A), by striking “119 and 1004” and inserting “119, and 1004”.

(2) Section 801 is amended by adding at the end the following:

“(f) EFFECTIVE DATE OF ACTIONS.—On and after the date of the enactment of the Copyright Royalty and Distribution Reform Act of 2004, in any case in which time limits are prescribed under this title for performance of an action with or by the Copyright Royalty Judges, and in which the last day of the prescribed period falls on a Saturday, Sunday, holiday, or other nonbusiness day within the District of Columbia or the Federal Government, the action may be taken on the next succeeding business day, and is effective as of the date when the period expired.”.

(3) Section 802(f)(1)(A) is amended—

(A) in clause (i), by striking “clause (ii) of this subparagraph and subparagraph (B)” and inserting “subparagraph (B) and clause (ii) of this subparagraph”; and

(B) by striking clause (ii) and inserting the following:

“(ii) One or more Copyright Royalty Judges may, or by motion to the Copyright Royalty Judges, any participant in a proceeding may, request from the Register of Copyrights an interpretation of any material questions of substantive law that relate to the construction of provisions of this title and arise in the course of the proceeding.

Any request for a written interpretation shall be in writing and on the record, and reasonable provision shall be made to permit participants in the proceeding to comment on the material questions of substantive law in a manner that minimizes duplication and delay. Except as provided in subparagraph (B), the Register of Copyrights shall deliver to the Copyright Royalty Judges a written response within 14 days after the receipt of all briefs and comments from the participants. The Copyright Royalty Judges shall apply the legal interpretation embodied in the response of the Register of Copyrights if it is timely delivered, and the response shall be included in the record that accompanies the final determination. The authority under this clause shall not be construed to authorize the Register of Copyrights to provide an interpretation of questions of procedure before the Copyright Royalty Judges, the ultimate adjustments and determinations of copyright royalty rates and terms, the ultimate distribution of copyright royalties, or the acceptance or rejection of royalty claims, rate adjustment petitions, or petitions to participate in a proceeding.”.

(4) Section 802(f)(1)(D) is amended by inserting a comma after “undertakes to consult with”.

(5) Section 803(a)(1) is amended—

(A) by striking “The Copyright” and inserting “The Copyright Royalty Judges shall act in accordance with this title, and to the extent not inconsistent with this title, in accordance with subchapter II of chapter 5 of title 5, in carrying out the purposes set forth in section 801. The Copyright”; and

(B) by inserting after “Congress, the Register of Copyrights,” the following: “copyright arbitration royalty panels (to the extent those determinations are not inconsistent with a decision of the Librarian of Congress or the Register of Copyrights),”.

(6) Section 803(b) is amended—

(A) in paragraph (1)(A)(i)(V)—

(i) by striking “in the case of” and inserting “the publication of notice requirement shall not apply in the case of”; and

(ii) by striking “, such notice may not be published.”;

(B) in paragraph (2)—

(i) in subparagraph (A), by striking “, together with a filing fee of \$150”;

(ii) in subparagraph (B), by striking “and” after the semicolon;

(iii) in subparagraph (C), by striking the period and inserting “; and”; and

(iv) by adding at the end the following:

“(D) the petition to participate is accompanied by either—

“(i) in a proceeding to determine royalty rates, a filing fee of \$150; or

“(ii) in a proceeding to determine distribution of royalty fees—

“(I) a filing fee of \$150; or

“(II) a statement that the petitioner (individually or as a group) will not seek a distribution of more than \$1000, in which case the amount distributed to the petitioner shall not exceed \$1000.”;

(C) in paragraph (3)(A)—

(i) by striking “(A) IN GENERAL.—Promptly” and inserting “(A) COMMENCEMENT OF PROCEEDINGS.—

“(i) RATE ADJUSTMENT PROCEEDING.—Promptly”;

and

(ii) by adding at the end the following:

“(ii) DISTRIBUTION PROCEEDING.—Promptly after the date for filing of petitions to participate in a proceeding to determine the distribution of royalties, the Copyright Royalty Judges shall make available to all participants in the proceeding a list of such participants. The initiation of a voluntary negotiation period among the participants shall be set at a time determined by the Copyright Royalty Judges.”.

(D) in paragraph (4)(A), by striking the last sentence;

and

(E) in paragraph (6)(C)—

(i) in clause (i)—

(I) in the first sentence, by inserting “and written rebuttal statements” after “written direct statements”;

(II) in the first sentence, by striking “which may” and inserting “which, in the case of written direct statements, may”; and

(III) by striking “clause (iii)” and inserting “clause (iv)”;

(ii) by amending clause (ii)(I) to read as follows:

“(ii)(I) Following the submission to the Copyright Royalty Judges of written direct statements and written rebuttal statements by the participants in a proceeding under paragraph (2), the Copyright Royalty Judges, after taking into consideration the views of the participants in the proceeding, shall determine a schedule for conducting and completing discovery.”;

(iii) by amending clause (iv) to read as follows:

“(iv) Discovery in connection with written direct statements shall be permitted for a period of 60 days, except for discovery ordered by the Copyright Royalty Judges in connection with the resolution of motions, orders, and disputes pending at the end of such period. The Copyright Royalty Judges may order a discovery schedule in connection with written rebuttal statements.”; and

(iv) by amending clause (x) to read as follows:

“(x) The Copyright Royalty Judges shall order a settlement conference among the participants in the proceeding to facilitate the presentation of offers of settlement among the participants. The settlement conference shall be held during a 21-day period following the 60-day discovery period specified in clause (iv) and shall take place outside the presence of the Copyright Royalty Judges.”.

(7) Section 803(c)(2)(B) is amended by striking “concerning rates and terms”.

(8) Section 803(c)(4) is amended by striking “, with the approval of the Register of Copyrights,”.

(9) Section 803(c)(7) is amended by striking “of Copyright” and inserting “of the Copyright”.

(10) Section 803(d)(2)(C)(i)(I) is amended by striking “statements of account and any report of use” and inserting “applicable statements of account and reports of use”.

(11) Section 803(d)(3) is amended by striking “If the court, pursuant to section 706 of title 5, modifies” and inserting “Section 706 of title 5 shall apply with respect to review by the court of appeals under this subsection. If the court modifies”.

(12) Section 804(b)(1)(B) is amended—

(A) by striking “801(b)(3)(B) or (C)” and inserting “801(b)(2)(B) or (C)”; and

(B) in the last sentence, by striking “change is” and inserting “change in”.

(13) Section 804(b)(3) is amended—

(A) in subparagraph (A), by striking “effective date” and inserting “date of enactment”; and

(B) in subparagraph (C)—

(i) in clause (ii), by striking “that is filed” and inserting “is filed”; and

(ii) in clause (iii), by striking “such subsections (b)” and inserting “subsection (b)”.

SEC. 4. ADDITIONAL TECHNICAL AMENDMENTS.

(a) DISTRIBUTION OF ROYALTY FEES.—Section 111(d) of title 17, United States Code, is amended—

(1) in the second sentence of paragraph (2), by striking all that follows “Librarian of Congress” and inserting “upon authorization by the Copyright Royalty Judges.”;

(2) in paragraph (4)—

(A) in subparagraph (B)—

(i) by striking the second sentence and inserting the following: “If the Copyright Royalty Judges determine that no such controversy exists, the Copyright Royalty Judges shall authorize the Librarian of Congress to proceed to distribute such fees to the copyright owners entitled to receive them, or to their designated agents, subject to the deduction of reasonable administrative costs under this section.”; and

(ii) in the last sentence, by striking “finds” and inserting “find”; and

(B) by striking subparagraph (C) and inserting the following:

“(C) During the pendency of any proceeding under this subsection, the Copyright Royalty Judges shall have the discretion to authorize the Librarian of Congress to proceed to distribute any amounts that are not in controversy.”.

(b) SOUND RECORDINGS.—Section 114(f) of title 17, United States Code, is amended—

(1) in paragraph (1)(A), in the first sentence, by striking “except where” and all that follows through the end period and inserting “except in the case of a different transitional

period provided under section 6(b)(3) of the Copyright Royalty and Distribution Reform Act of 2004, or such other period as the parties may agree.”;

(2) by amending paragraph (2)(A) to read as follows:

“(2)(A) Proceedings under chapter 8 shall determine reasonable rates and terms of royalty payments for public performances of sound recordings by means of eligible nonsubscription transmission services and new subscription services specified by subsection (d)(2) during the 5-year period beginning on January 1 of the second year following the year in which the proceedings are to be commenced, except in the case of a different transitional period provided under section 6(b)(3) of the Copyright Royalty and Distribution Reform Act of 2004, or such other period as the parties may agree. Such rates and terms shall distinguish among the different types of eligible nonsubscription transmission services and new subscription services then in operation and shall include a minimum fee for each such type of service. Any copyright owners of sound recordings or any entities performing sound recordings affected by this paragraph may submit to the Copyright Royalty Judges licenses covering such eligible nonsubscription transmissions and new subscription services with respect to such sound recordings. The parties to each proceeding shall bear their own costs.”; and

(3) in paragraph (2)(B), in the last sentence, by striking “negotiated under” and inserting “described in”.

(c) PHONORECORDS OF NONDRAMATIC MUSICAL WORKS.—Section 115(c)(3) of title 17, United States Code, is amended—

(1) in subparagraph (B), by striking “subparagraphs (B) through (F)” and inserting “this subparagraph and subparagraphs (C) through (E)”;

(2) in subparagraph (D), in the third sentence, by inserting “in subparagraphs (B) and (C)” after “described”; and

(3) in subparagraph (E), in clauses (i) and (ii)(I), by striking “(C) or (D)” each place it appears and inserting “(C) and (D)”.

(d) NONCOMMERCIAL BROADCASTING.—Section 118 of title 17, United States Code, is amended—

(1) in subsection (b)(3), by striking “copyright owners in works” and inserting “owners of copyright in works”; and

(2) in subsection (c)—

(A) in the matter preceding paragraph (1), by striking “established by” and all that follows through “engage” and inserting “established by the Copyright Royalty Judges under subsection (b)(4), engage”; and

(B) in paragraph (1), by striking “(g)” and inserting “(f)”.

(e) SATELLITE CARRIERS.—Section 119 of title 17, United States Code, is amended—

(1) in subsection (b)(4)—

(A) in subparagraph (B), by striking the second sentence and inserting the following: “If the Copyright Royalty Judges determine that no such controversy exists, the Copyright Royalty Judges shall authorize the Librarian of Congress to proceed to distribute such fees to the copyright owners entitled to receive them, or to their designated agents, subject to the deduction of reasonable administrative costs under this section.”; and

(B) by amending subparagraph (C) to read as follows:

“(C) WITHHOLDING OF FEES DURING CONTROVERSY.—

During the pendency of any proceeding under this subsection, the Copyright Royalty Judges shall have the discretion to authorize the Librarian of Congress to proceed to distribute any amounts that are not in controversy.”; and

(2) in subsection (c)(1)(F)(i), in the last sentence, by striking “arbitrary” and inserting “arbitration”.

(f) DIGITAL AUDIO RECORDING DEVICES.—Section 1007 of title 17, United States Code, is amended—

(1) in subsection (b)—

(A) in the second sentence, by striking “Librarian of Congress” and inserting “Copyright Royalty Judges”; and

(B) in the last sentence, by striking “by the Librarian”; and

(2) in subsection (c), in the last sentence, by striking “by the Librarian”.

(g) REMOVAL OF INCONSISTENT PROVISIONS.—The amendments contained in subsection (h) of section 5 of the Copyright Royalty and Distribution Reform Act of 2004 shall be deemed never to have been enacted.

(h) EFFECTIVE DATE.—Section 6(b)(1) of the Copyright Royalty and Distribution Reform Act of 2004 (Public Law 108–419) is amended by striking “commenced before the date of enactment of this Act” and inserting “commenced before the effective date provided in subsection (a)”.

SEC. 5. PARTIAL DISTRIBUTION OF ROYALTY FEES.

Section 801(b)(3)(C) of title 17, United States Code, is amended—

(1) by striking all that precedes clause (i) and inserting the following:

“(C) Notwithstanding section 804(b)(8), the Copyright Royalty Judges, at any time after the filing of claims under section 111, 119, or 1007, may, upon motion of one or more of the claimants and after publication in the Federal Register of a request for responses to the motion from interested claimants, make a partial distribution of such fees, if, based upon all responses received during the 30-day period beginning on the date of such publication, the Copyright Royalty Judges conclude that no claimant entitled to receive such fees has stated a reasonable objection to the partial distribution, and all such claimants—”; and

(2) in clause (i), by striking “such” and inserting “the”.

SEC. 6. EFFECTIVE DATE.

(a) IN GENERAL.—Except as provided under subsection (b), this Act and the amendments made by this Act shall be effective as if included in the Copyright Royalty and Distribution Reform Act of 2004.

H. R. 1036—7

(b) PARTIAL DISTRIBUTION OF ROYALTY FEES.—Section 5 shall take effect on the date of enactment of this Act.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*